

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1931

IN THE MATTER OF:

Served December 5, 1978

CENTRAL DELIVERY SERVICE OF )  
WASHINGTON, INC. - Investigation )  
and Partial Revocation of )  
Certificate No. 23 )

Case No. MP-78-6

By Order No. 1865, served July 14, 1978, the Commission found (a) that Central Delivery Service of Washington, Inc. (Central), is in violation of Title II, Article XII, Section 3 of the Compact, Commission Regulation 63-01 and the fourth ordering paragraph of its Certificate of Public Convenience No. 23 for failure to render reasonable, continuous and adequate service to the public in pursuance of its authority to provide transportation for American Airlines and the United States Nuclear Regulatory Commission (NRC), and (b) that Central has violated the third ordering paragraph of its Certificate No. 23 by failure to file written notice with the Commission within five days of the date of termination of Central's contracts with American Airlines and the NRC. Central was directed fully to comply with the above-specified regulatory requirements and was further directed to file either a statement of compliance or a response showing cause why its Certificate No. 23 should not be partially revoked.

On August 18, 1978, Central filed its response. In essence, Central contends that its admitted failure to provide service for American Airlines and the NRC is not a "willful" failure within the meaning of Title II, Article XII, Section 4(g) of the Compact. Central asserts that the only reason it no longer holds a contract to serve NRC is because it was underbid by another certificated carrier. With respect to the loss of its contract to serve American Airlines, Central relies on the record in Commission Docket Nos. 399 and 400.<sup>1/</sup> Central contends that it is amenable to entering into a contract with either American Airlines or the NRC. In addition, Central argues that partial revocation of its certificate at this point would require Central to undergo the expense of a new application if, at some future date, it should again obtain a contract with one of these parties.

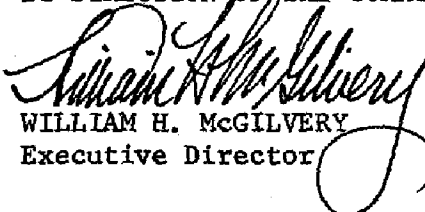
<sup>1/</sup> In Docket No. 400, the Commission granted Airport Limo, Inc., authority to serve American Airlines, finding that Central's existing service had been unsatisfactory and that American Airlines had articulated a supportable desire to end its contract with Central. See Order No. 1823, served March 27, 1978, and Order No. 1843, served May 12, 1978.

Central relies primarily on two cases decided by the Interstate Commerce Commission, Collins v. Routt and Vitalis, 51 M.C.C. 218 (1950) and Central Jersey Motor Lines, Inc. - Revocation of Permit, 86 M.C.C. 53 (1961), for the proposition that a finding of willful abandonment of operations is not justified where the carrier continues to possess the wherewithall of providing transportation, but is merely unable to obtain a contract. Those proceedings, however, are clearly distinguishable from the instant case inasmuch as they involve permits under which the contract carrier was not limited to serving named parties and could, therefore, contract with greater flexibility than can Central.

Here, we feel the operative question is whether Central is or will be rendering a transportation service to American Airlines and the NRC. Certificates are not issued in anticipation of nonexistent business or for purposes of speculation and, while it is possible that the NRC may award a contract to Central next year, it is equally possible that no such contract may ever be executed. Based upon the record in Docket Nos. 399 and 400 upon which Central relies, we conclude that it is unlikely that American Airlines will extend a contract to Central. Certificates are issued for the purpose of authorizing a transportation service. Central, through its own actions lost the contracts underlying the sections of its certificate at issue herein and, despite being ordered so to do, it has not been able to resume service thereunder within a reasonable time. Moreover, no explanation has been offered for Central's willful failure to notify the Commission of the cancellation of its contracts with American Airlines and the NRC.

THEREFORE, IT IS ORDERED that Certificate of Public Convenience and Necessity No. 23 issued to Central Delivery Service of Washington, Inc., to the extent said certificate authorizes charter operations pursuant to contracts with American Airlines and the United States Nuclear Regulatory Commission, is hereby revoked.

BY DIRECTION OF THE COMMISSION:

  
WILLIAM H. MCGILVERY  
Executive Director

STRATTON, Chairman, concurs:

Central's point about the futility of an order revoking dormant authority that may then have to be revived in a subsequent proceeding is well taken. But this criticism applies to the regulatory scheme, and not, on this record, to the case at hand. The remedy is a more responsive procedure governing authority to transport employees, students and other such groups in "charter pursuant to contract" irregular-route operations.